

§ 805.24

the hearing date unless waived by consent. Notice of such a hearing shall be given to the general public and the press in the manner provided in § 805.1(b).

(c) Except to the extent inconsistent with the provisions of this subpart, adjudicatory hearings shall be conducted in accordance with the provisions of §§ 805.2 through 805.6.

§ 805.24 Assessment of a penalty/abatement or remedial action.

The executive director may recommend to the commission the amount of the penalty to be imposed or the abatement and remedial actions to be required. Such a recommendation shall be in writing and shall set forth the basis for the penalty amount proposed. Based upon the record submitted to the commission, the commission shall decide whether a violation has occurred that justifies the imposition of a penalty pursuant to Section 15.17 of the compact or the requirement of abatement or remedial action. If it is found that such a violation has occurred, the commission shall determine the amount of the penalty to be paid and the nature of the abatement or remedial action to be undertaken.

§ 805.25 Factors to be applied in fixing penalty amount.

(a) Consideration shall be given to the following factors in deciding the amount of any penalty or any settlement:

(1) Previous violation, if any, of the compact, commission regulations or orders;

(2) The intent of the alleged violator;

(3) The extent to which the violation caused adverse environmental consequences;

(4) The costs incurred by the commission or any signatory party relating to the failure to comply with the compact, commission regulations or orders;

(5) The extent to which the violator has cooperated with the commission in correcting the violation and remediate any adverse consequences or harm that has resulted therefrom;

(6) The extent to which the failure to comply with the commission's compact and regulations was economically beneficial to the violator; and

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(7) The length of time over which the violation occurred and the amount of water used during that time period.

(b) The commission retains the right to waive any penalty or reduce the amount of the penalty should it determine that, after consideration of the factors in paragraph (a) of this section, extenuating circumstances justify such action.

§ 805.26 Enforcement of penalties/abatement or remedial orders.

Any penalty imposed or abatement or remedial action ordered by the commission shall be paid or completed within such time period as shall be fixed by the commission. The executive director and commission counsel are authorized to take such action as may be necessary to assure enforcement of this subpart. If a proceeding before a court becomes necessary, the action of the commission in determining a penalty amount shall constitute the penalty amount recommended by the commission to be fixed by the court pursuant to Section 15.17 of the compact.

§ 805.27 Settlement by agreement.

An alleged violator may request settlement of an enforcement proceeding by agreement. If the executive director determines that settlement by agreement is in the best interest of the commission, he/she may submit to the commission a proposed settlement agreement. No settlement will be considered by the commission unless the alleged violator has indicated in writing to the commission acceptance of the terms of the agreement and the intention to comply with all requirements of the settlement agreement including payment of any settlement amount or completion of any abatement or remedial action within the time period provided. If the commission determines not to approve a settlement agreement, the commission may proceed with an enforcement action in accordance with this subpart.

§ 805.28 Effective date.

This subpart shall be effective on May 11, 1995.